

**DEPARTMENT OF PUBLIC SERVICE REGULATION  
BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MONTANA**

<b>In the Matter of the Development of</b>	)	
<b>State Implementation of the Federal</b>	)	<b>UTILITY DIVISION</b>
<b>Communications Commission's</b>	)	
<b>Triennial Review</b>	)	<b>DOCKET NO. D2003.5.62</b>
	)	

**MOTION TO POSTPONE MASS MARKET  
SWITCHING CASE AND CLOSE DOCKET**

**I. MOTION**

Qwest Corporation ("Qwest") hereby requests that the Public Service Commission of the State of Montana (the "Commission") enter an order postponing its inquiry into issues related to Qwest's obligation to provide unbundled switching for mass market customers (the "Inquiry"). Accordingly, Qwest requests that the Commission permit Qwest to withdraw without prejudice its intervention for the Inquiry or, alternatively, that the Commission defer indefinitely any action in this docket, both subject to Qwest's right to refile or reinitiate the Inquiry at a future time. Thus, Qwest moves the Commission to vacate: (1) the schedule for hearings and the filing of prefiled testimony, (2) all discovery (including outstanding subpoenas issued to third parties), (3) pending motions, and (4) all other procedural requirements, subject to Qwest's right to move forward with the Inquiry in the future.

**II. DISCUSSION**

**A. GROUNDS FOR MOTION**

1. Qwest submits that competition for local exchange in Montana is vigorous and meaningful and maintains that switching for mass market customers should not be subject to the unbundling obligations of Section 251 of the Telecommunications Act. This competition

notwithstanding, however, Qwest has determined that it is not prudent or practical at this time for it to continue to prosecute the issues associated with the Inquiry or to ask the Commission to devote its scarce resources to the Inquiry. The reasons Qwest has reached these conclusions are four fold:

(a) Qwest has decided to pursue unbundled switching cases for mass market customers in only those states where it clearly meets the triggers for elimination of the unbundling obligation as set by the FCC in the Triennial Review Order.<sup>1</sup> Based upon the responses that Qwest has received to date, however, Qwest cannot verify unequivocally that the three switch trigger is met in Montana.

(b) As the mass market switching proceedings in Qwest's 14-state region have unfolded, it has become clear that Qwest underestimated the resources required to prosecute 14 separate state actions simultaneously. Moreover, Qwest has received voluminous discovery requests from out-of-region states with respect to its out-of-region business, and Qwest had not anticipated discovery of this magnitude.

(c) Qwest quite simply is presently resource-constrained, a fact well-known to the Commission and the general public. Accordingly, Qwest must choose and prioritize carefully where it litigates issues, including the Inquiry. With this backdrop and in view of the other forces at play and described above, Qwest has decided that proceeding at this time with the Inquiry is not in its immediate financial interests.

(d) It is well-known that many parties have appealed the Order, that these appeals have been consolidated in the United States Circuit Court of Appeals for the D.C. Circuit and that the D.C. Circuit has ordered the appeals be briefed and argued on an expedited basis. While these facts do not necessarily indicate anything about the timing and substance of the D.C. Circuit's rulings, many observers believe there is a significant

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<sup>1</sup> In those states where the triggers are met, Qwest also will be presenting other evidence relating to economics, competition, and operational matters in the market demonstrating that switching for mass market customers should not be unbundled.

possibility that the FCC's rulings in the Order will be reversed and remanded to the FCC for further proceedings before that agency. This possibility, in and of itself, would not militate in favor of a deferral of the Inquiry, and Qwest will pursue mass market switching cases in many of its other in-region states; however, when considered in combination with the foregoing factors, Qwest has concluded that the Inquiry should not take place at the present time.

2. For the above and foregoing reasons, considered together, Qwest has determined not to proceed with the Inquiry at this time and with similar proceedings in Wyoming, South Dakota and Idaho. Qwest's decision at this time to request postponement of its nine-month mass market switching case will allow it and other parties to focus their resources on other states so that those cases can be completed within the nine-month period required by the TRO.

3. Qwest is simultaneously filing a similar motion with the state commissions of the aforementioned states asking them to postpone their investigation of issues related to mass market switching impairment and, without prejudice, to close their dockets related to that issue. However, because of the degree of competition in Montana, Qwest reserves its ability under the Order to re-open these proceedings and request a commission order eliminating the unbundling obligation for mass market switching.

## **B. BATCH HOT CUT ISSUES**

On October 31, 2003, Qwest (on behalf of AT&T and MCI) filed a joint proposal of a process and framework to address the batch hot cut issue.<sup>2</sup> On November 12, 2003, consistent with its obligations under the joint proposal, Qwest filed its proposal for a region-wide batch loop conversion process,<sup>3</sup> wherein Qwest, among other things, summarized its proposal regarding implementation of a process for batch hot cuts. At a Commission work session on November 13, 2003, the Commission approved the joint motion of Qwest, AT&T and MCI,

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<sup>2</sup> Joint Proposal For the Process and Framework To Be Used to Address the Batch Hot Cut Requirements of the FCC's Triennial Review Order, October 31, 2003.

<sup>3</sup> Qwest's Proposal For Region wide Batch Loop Conversion Process, November 12, 2003.

agreeing to participate in the multi-state forum process related to batch hot cut issues and likewise adopting the procedural schedule proposed for batch hot cut testimony proposed by Qwest, MCI, and AT&T.

By filing this Motion, Qwest has decided not to seek relief at this time from its current obligation to provide unbundled switching for mass market customers in Montana. Thus, there is no need for the Commission to receive testimony or conduct hearings related to Qwest's batch hot cut processes.

This issue was recently addressed by an ALJ in Washington. Several weeks ago, after Verizon decided not to seek mass market switching relief in Washington, the ALJ requested comments on whether it was necessary for the Washington Commission to conduct a batch hot cut analysis of Verizon. Verizon, MCI, and Commission Staff filed comments agreeing that "the requirement for states to approve and implement a batch-cut process for ILECs is an integral part of the mass-market switching analysis" under TRO, but also concluding that "there is no obligation for ILECs or the Commission to develop a batch-cut process unless the ILEC files a petition with the Commission contesting the FCC's findings of impairment for mass-market switching."<sup>4</sup> On November 19, 2003, the ALJ agreed, declining "to initiate further proceedings at this time to address development of a batch-cut process for ILECs other than Qwest."<sup>5</sup> A copy of the ALJ's decision in Washington is attached hereto as Exhibit A.

By filing this motion, Qwest hereby withdraws its request for mass market switching relief, thus placing it in the same posture as Verizon in Washington. Thus, as the ALJ concluded in Washington, there is no need for the Commission to proceed with the batch hot cut issue and all filing dates and hearings related to that issue should be vacated.

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<sup>4</sup> Order Declining to Initiate Proceedings to Address ILEC Batch Cut Processes; Closing Docket (Order No. 3), Docket No. UT-033025, Washington Utilities and Transportation Commission (November 19, 2003) ¶ 7.

<sup>5</sup> *Id.* ¶ 14.

That said, Qwest remains committed to the batch hot cut forum and, even though no further action should be taken on that issue in Montana, Qwest has no objection to Commission staff monitoring and otherwise participating in the batch hot cut forum.

### **C. SCOPE OF MOTION**

This Motion relates only to issues related to mass market switching impairment (including batch hot cut issues). Nothing herein should be construed as Qwest's agreement to forego or otherwise discontinue action to implement any other aspects of the TRO. In a technical sense, Qwest believes it has the unilateral right to withdraw its case that is the subject of the Inquiry because, in the absence of such a case, the status quo favors the CLECs. That having been said, Qwest believes that since the Commission has opened the Inquiry and initiated proceedings, it is appropriate to request an order from the Commission memorializing the dismissal or deferral of the Inquiry. Furthermore, since no party has filed testimony or formalized its advocacy, there can be no prejudice flowing from Qwest's decision.


### **III. CONCLUSION AND CONTACT WITH OTHER PARTIES**

Qwest therefore moves this commission to postpone the current proceedings relating to switching for mass market customers by vacating: (1) the schedule for hearings and the filing of prefiled testimony, (2) all discovery (including outstanding subpoenas issued to third parties), (3) pending motions, and (4) all other procedural requirements, all without prejudice to the ability of Qwest to re-open for a determination on the merits.

Qwest has contacted counsel for AT&T and MCI regarding its request, and AT&T and MCI have represented that that they have no objection to vacating these proceedings consistent with the request contained in the immediately preceding paragraph.

DATED: December 11, 2003.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "James C. Paine". The signature is fluid and cursive, with a large loop at the beginning and a trailing flourish at the end.

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